

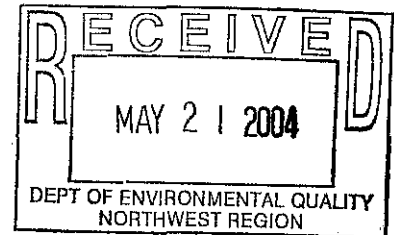
Recorded in MULTNOMAH COUNTY, OREGON  
C. Swick, Deputy Clerk  
A49 16 ATTDS  
Total : 116.00

2004-083416 05/12/2004 01:08:24pm

After recording, return to:

Oregon DEQ  
2020 SW 4th Ave. # 400  
Portland, OR 97201  
Attn: Liz Waddle

STATE OF OREGON  
Department of State Lands  
EASEMENT NO. 31530-EA



The STATE OF OREGON, by and through its Department of State Lands acting under authority of the State Land Board, **Grantor**, for and in consideration of \$ 250.00 and Grantee's undertaking of the obligations incurred herein, hereby grants to **Grantee**,

NAME of GRANTEE:

ADDRESS:

Oregon Department of  
Environmental Quality

Land Quality Division  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

A permanent easement in gross (the "**Permanent Easement**") over, upon, and across all submerged and submersible lands of the State of Oregon lying within the real property situated at approximately River Mile 7 of the Willamette River in Multnomah County, Oregon, more particularly described in Exhibit A attached hereto and as shown on the attached Exhibit C (the "**Easement Parcel**").

The Permanent Easement is intended to further the completion of remedial action authorized under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601 *et seq.*, as amended ("**CERCLA**"). The Easement Parcel shall be used for the following purposes, and no other:

- (a) Site preparation, including without limitation debris and piling removal;
- (b) Construction, maintenance, operation and replacement of materials consisting of a sand cap placed over contaminated sediments within the Willamette River, an organophyllic clay cap over known contaminated beach seeps, and placement of rock and concrete armor over the cap (a "**Sediment Cap**");
- (c) Re-grading and re-vegetation of beach areas encompassed within the Easement Parcel; and
- (d) Post-construction sediment sampling to determine cap effectiveness;

all in accordance with the following documents (the "**Remediation Plan**"):

- (a) "Final Technical Plans and Specifications," published by Grantee as Task Order No. 71-03-02, and dated December 2003, as subsequently amended;
- (b) "Record of Decision," published by the United States Environmental Protection Agency (the "EPA"), dated March 1996; and

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- (c) "Sediment Cap Basis of Design, McCormick & Baxter Creosoting Company, Portland, Oregon," prepared for Grantee as Task Order No. 88-97-34, and dated May 2002;

TOGETHER WITH a temporary easement in gross (the "**Construction Easement**") over, upon, and across all submerged and submersible lands of the State of Oregon lying within the real property situated at approximately River Mile 7 of the Willamette River in Multnomah County, Oregon, more particularly described in Exhibit B attached hereto and as shown on the attached Exhibit C (the "**Construction Site**"). The Construction Easement shall be used for the purpose of providing access to the Easement Parcel for Grantee and Grantee's contractors during initial construction of the Sediment Cap, including without limitation site preparation and re-grading and re-vegetation of beach areas encompassed within the Easement Parcel. The Construction Easement shall expire upon the completion of initial construction of the Sediment Cap.

The Permanent Easement and the Construction Easement shall be subject and subordinate to all easements and restrictions of record encumbering the Easement Parcel and the Construction Site and existing as of March 15, 2004, and to all statutory rights of way, including without limitation the following:

- (a) A right of way for the purposes of constructing and maintaining a railroad bridge over the Willamette River, granted to Portland & Seattle Railway Company (*Bellinger & Cotton's Annotated Codes and Statutes of Oregon*, § 3336 (1902); *Lord's Oregon Laws*, § 3938 (1909)), and to its successors and assigns, and described as follows: a one hundred foot wide strip, being fifty feet in width on each side of the center line of the road when located and staked out, and as shown on Exhibit C; and
- (b) A right of way for the purposes of constructing and maintaining sanitary pressure mains, granted to the City of Portland (ORS 273.761(2) (1973 through 2003) and described as follows: a fifty foot wide strip, being twenty-five feet in width on each side of the sanitary pressure mains, and as shown on Exhibit C.

Grantee shall not, without the prior written approval of Grantor, enter into any agreement, memoranda, or plan that purports to modify in any way the rights retained by Grantor under this Easement or under any right of way, encumbrance, or easement existing at the time of this grant of easement.

TO HAVE AND TO HOLD the same unto Grantee in perpetuity, subject to the following conditions:

1. Use of the Easement Parcel and the Construction Site shall be on a nonexclusive, non-priority basis benefiting Grantee and Grantee's contractors. Grantor retains the right to grant additional easements within the Easement Parcel and the Construction Site subject to the provisions of the administrative rules governing the granting of easements.

2. Grantee shall not, without the prior written approval of Grantor, purport to modify in any way this Easement, including without limitation modifications to:

- (a) The type of use authorized by the Permanent Easement or the Construction Easement;
- (b) The number of authorized developments or uses;
- (c) The size or location of the Easement Parcel or the Construction Site; and
- (d) Allow other persons to use the Easement Parcel or the Construction Site for any purpose not described in the Remediation Plan.

3. The Easement Parcel shall remain open to the public for recreational and other non-proprietary uses, except:

- (a) The Easement Parcel shall be closed to all anchoring;
- (b) The Easement Parcel shall be closed for all purposes to all vessels that are equipped with a propeller or motor of any kind;
- (c) The Easement Parcel shall be closed to all grounding, except that grounding which is incidental to and necessary for launching and landing of recreational vessels; and
- (d) The Easement Parcel shall be closed to all public uses whenever Grantor receives written notice from Grantee that Grantee has determined that site conditions pose a threat to public health or the environment.

The Construction Site shall be closed to all public use until the Construction Easement expires. Grantor may prescribe public use of the Easement Parcel and Construction Site through administrative rulemaking or other action authorized by law.

4. Grantee shall be solely responsible for maintenance of the Sediment Cap and any other structures required to be placed in the Easement Parcel under the Remediation Plan. Notwithstanding the foregoing, Grantor and/or its authorized representative(s) shall have the right to enter into and upon the Easement Parcel and the Construction Site at any time for the purposes of any inspection or at any time for management activities not related to the Sediment Cap or the Remediation Plan.

5. Except as expressly authorized in writing by the Department, Grantee shall not:

- (a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, beyond that necessary for construction or maintenance of the Sediment Cap; or
- (b) Remove any sediment, sand, gravel or other material from the Easement Parcel or the Construction Site, for any purpose not described in the Remediation Plan including without limitation commercial use or sale, except as expressly authorized in writing by Grantor.

Routine maintenance including vegetation trimming shall be allowed.

6. Subject to the requirements of the Remediation Plan, Grantee shall conduct all its activities within and uses of the Easement Parcel and the Construction Site:

- (a) In a manner that conserves fish and wildlife habitat;
- (b) In a manner that protects water quality;

- (c) In a manner that does not contribute to the introduction or spread of noxious weeds or pests; and
- (d) During the in-water work windows of the Oregon Department of Fish & Wildlife.

7. Grantee shall:

- (a) Inspect the condition of the Easement Parcel and the Construction Site and the developments authorized by these Easements as provided in the Remediation Plan;
- (b) Discharge all duties imposed under the Remediation Plan as such duties affect the Easement Parcel or the Construction Site;
- (c) Comply with all applicable federal (including without limitation CERCLA), state, and local laws;
- (d) Remove all construction debris and unused materials from the Easement Parcel and the Construction Site within fourteen (14) days of completing initial construction of the Sediment Cap;
- (e) Provide written reports to Grantor annually on or before April 30 of each year that:
  - (1) State whether the Sediment Cap is functioning as described in the Remediation Plan;
  - (2) Summarize all activities undertaken by Grantee in the previous 12-month period that may affect the Easement Parcel or disclose the functioning of the Sediment Cap, including without limitation all sampling, analysis and investigations; and
  - (3) Summarize information not described in (1) or (2) that is known to Grantee that may affect the Easement Parcel or disclose the functioning of the Sediment Cap, including without limitation accidents, trespasses, sales of adjacent land parcels, rezoning of adjacent land parcels, and acts of nature.
- (f) Perform all of the obligations of the State of Oregon that are described in the "Superfund State Contract" between EPA and DEQ for the McCormick & Baxter Site dated May 22, 1996;
- (g) As permitted by the local United States Coast Guard District Aids to Navigation Office or other federal or state agency, install and maintain aids to navigation marking the upriver, waterward and downriver boundaries of the Easement Parcel, unless Grantee demonstrates to Grantor that all aids to navigation will damage the Sediment Cap; and
- (h) Take all measures reasonably necessary to have notices and warnings describing the closures and restrictions applicable to the Easement Parcel or the navigation hazards posed by the Sediment Cap included in or on books, manuals, nautical charts and other reference sources issued, compiled or published by the National Oceanographic Atmospheric Administration, United States Coast Guard, United States Corp of Engineers, and Oregon Marine Board.

8. To the extent permitted by Section 7 of Article XI of the Oregon Constitution and by the Oregon Tort Claims Act, Grantee shall hold harmless and indemnify Grantor, from all liability

and from all costs and expenses of any kind arising from Grantee's use of the Permanent Easement and the Construction Easement.

9. Grantee shall pay to Grantor the current market value, as determined by Grantor, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the Sediment Cap or other activities engaged in by Grantee within the Permanent Easement or Construction Easement; provided, this payment obligation does not apply to activities undertaken in compliance with the Remediation Plan.

10. Grantee shall pay all assessments that are levied against any land under the jurisdiction of Grantor if the assessment levied by the assessing entity is at least partially based on the Permanent Easement or Construction Easement.

11. Grantee shall use the Easement Parcel and the Construction Site only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.

12. The Easements granted by this instrument may not be transferred or assigned in any manner.

13. The Easements granted by this instrument do not convey an estate in fee simple of the lands subject to the Easements. Title to the real property that is the subject of the Easements granted herein shall remain in the State of Oregon.

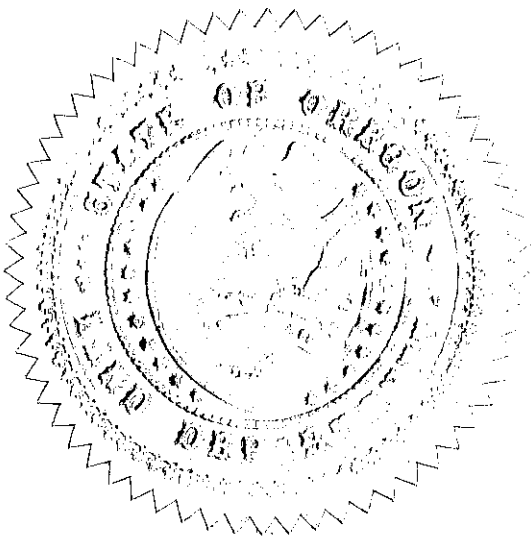
14. All notices and other communications from Grantee to Grantor regarding this easement shall be addressed to:

Director  
Department of State Lands  
775 Summer Street NE  
Salem, Oregon 97301

15. The individual executing and acknowledging this instrument on behalf of the Department of State Lands represents and warrants that he has authority so to act and that the Easements granted herein have been authorized by the State Land Board.

*(The remainder of this page has been intentionally left blank.)*

WITNESS the seal of the Department of State Lands affixed this 13<sup>th</sup> day of April, 2004.

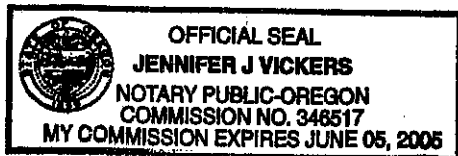


STATE OF OREGON,  
acting by and through its Department of State Lands  
under authority from the State Land Board

By: Stephen J. Purchase  
Stephen J. Purchase  
As: Assistant Director for Field Operations

[illegible]

This foregoing instrument was acknowledged before me this 13<sup>th</sup> day of April, 2004, by Stephen J. Purchase, the Assistant Director for Field Operations of the Department of State Lands.



Signature Jennifer J. Weckers  
My commission Expires 6-5, 2004.

## EXHIBIT A

### Legal Description – Permanent Easement

All state-owned submerged and submersible lands in the Willamette River fronting tax lots 100, 200 and 300 (Multnomah County tax assessors map 1N 1E 18AB) Willamette Meridian, Multnomah County, Oregon, and more particularly described as follows: The Permanent Easement area for a Sediment Cap located in Sections 7 and 18, Township 1 North, Range 1 East of the Willamette Meridian and Sections 12 and 13, Township 1 North, Range 1 West of the Willamette Meridian, commencing at a benchmark identified as NGS E 718, located on the Burlington Northern Railroad trestle where it crosses the Union Pacific Railroad, and having the State Plane coordinates of Northing 706091.01 and Easting 7628271.18, thence proceeding S 6° 06' 12" W for 1,286.87 feet to a point identified in Exhibit C (Easement for Sediment Cap Drawing 1, produced by Ecology and Environment, Inc. and David Evans and Associates for Oregon Department of Environmental Quality) also identified as N= 704811.43, E= 7628134.36 on the Ecology and Environment Drawing No. 4, "SEDIMENT CAP AND SEEP TREATMENT PLAN", dated 12/15/03, this being the True Point of Beginning;

thence S 56° 59' 33" E for 322.13',  
thence S 54° 44' 23" E for 170.76',  
thence S 51° 40' 09" E for 64.28',  
thence S 48° 48' 17" E for 392.80',  
thence S 43° 21' 51" E for 242.70',  
thence S 40° 59' 29" W for 151.57',  
thence N 49° 40' 11" W for 460.95',  
thence N 89° 26' 12" W for 242.35',  
thence S 35° 00' 23" W for 338.69',  
thence N 56° 22' 01" W for 569.23',  
thence S 47° 51' 14" W for 49.24',  
thence N 49° 24' 38" W for 482.31',  
thence N 24° 07' 19" W for 124.54',  
thence N 49° 12' 58" W for 755.36',  
thence N 40° 31' 49" W for 184.01',  
thence N 39° 42' 45" E for 208.02',  
thence S 68° 03' 29" E for 356.49',  
thence S 48° 16' 13" E for 103.72',  
thence N 41° 43' 47" E for 239.80',  
thence S 61° 13' 52" E for 61.84',  
thence N 39° 08' 39" E for 247.64',  
thence S 88° 49' 58" E for 139.98',  
thence S 11° 14' 56" W for 186.67',  
thence N 78° 45' 04" W for 50',  
thence S 41° 43' 49" W for 429.70',

thence to an arc with the following curve elements:

Δ=137°41'19"

R=97.00'

L=233.10'

LC=S 44° 37' 31" E for 180.93',

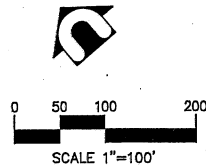
thence S 80° 50' 06" E for 120.60',  
thence S 66° 33' 04" E for 109.94',  
thence S 54° 24' 39" E for 25.75',  
thence S 81° 35' 51" E for 129',  
thence S 53° 37' 32" E for 105.26',  
thence S 64° 30' 26" E for 183.89',  
thence N 68° 23' 05" E for 170.32' to end at the True Point of Beginning, encompassing 28 acres more or less.

**EXHIBIT B**  
**Legal Description – Construction Easement**

All state-owned submerged and submersible lands in the Willamette River fronting tax lots 100, 200 and 300 (Multnomah County tax assessors map 1N 1E 18AB) Willamette Meridian, Multnomah County, Oregon, and more particularly described as follows: The Easement area for construction and placement of a Sediment Cap located in Sections 7 and 18, Township 1 North, Range 1 East of the Willamette Meridian and Sections 12 and 13, Township 1 North, Range 1 West of the Willamette Meridian, commencing at a benchmark identified as NGS E 718, located on the Burlington Northern Railroad trestle where it crosses the Union Pacific Railroad, and having the State Plane coordinates of Northing 706091.01 and Easting 7628271.18, thence proceeding S 6° 06' 12" W for 1,286.87 feet to a point identified in Exhibit C (Easement for Sediment Cap Drawing 1, produced by Ecology and Environment, Inc. and David Evans and Associates for Oregon Department of Environmental Quality) also identified as N= 704811.43, E= 7628134.36 on the Ecology and Environment Drawing No. 4, "SEDIMENT CAP AND SEEP TREATMENT PLAN", dated 12/15/03, this being the True Point of Beginning:

thence S 56° 59' 33" E for 322.13',  
thence S 54° 44' 23" E for 170.76',  
thence S 51° 40' 09" E for 64.28',  
thence S 48° 48' 17" E for 392.80',  
thence S 43° 21' 51" E for 263.52' more or less to intersect the south eastern property boundary,  
thence S 39° 37' 44" W along that property boundary towards the center of the Willamette River navigation channel for 864' more or less,  
thence N 49° 30' W along the thread of the stream for 2,955 feet, more or less,  
thence N 39° E for 774' more or less to intersect the bank of the Willamette River in Willamette Cove,  
thence S 84° 50' E for 508' more or less along the bank of Willamette Cove,  
thence S 38° 45' E for 312' more or less to a point on the permanent easement as shown in Exhibit C (Easement for Sediment Cap Drawing 1, produced by Ecology and Environment, Inc. and David Evans and Associates for Oregon Department of Environmental Quality),  
thence S 88° 49' 58" E for 139.98',  
thence S 11° 14' 56" W for 186.67',  
thence N 78° 45' 04" W for 50',  
thence S 41° 43' 49" W for 429.70',  
thence S 44° 29' 25" E for 181.23' this segment being a chord of a circle with a radius of 97' and extending to the west,  
thence S 80° 50' 06" E for 120.60',  
thence S 66° 33' 04" E for 109.94',  
thence S 54° 24' 39" E for 25.75',  
thence S 81° 35' 51" E for 129',  
thence S 53° 37' 32" E for 105.26',  
thence S 64° 30' 26" E for 183.89',  
thence N 68° 23' 05" E for 170.32' to end at the True Point of Beginning, and encompassing 50 acres more or less, being the entire area to be covered by the sediment cap with sufficient additional area above the submerged and submersible lands of the State of Oregon to allow for ODEQ and its contractors to complete the construction and placement of the Sediment Cap and complete any additional in water work as required under the 1996 Record of Decision, the March 1998 Amended Record of Decision and the May 2002 Sediment Cap Basis of Design documents.



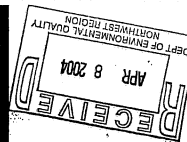
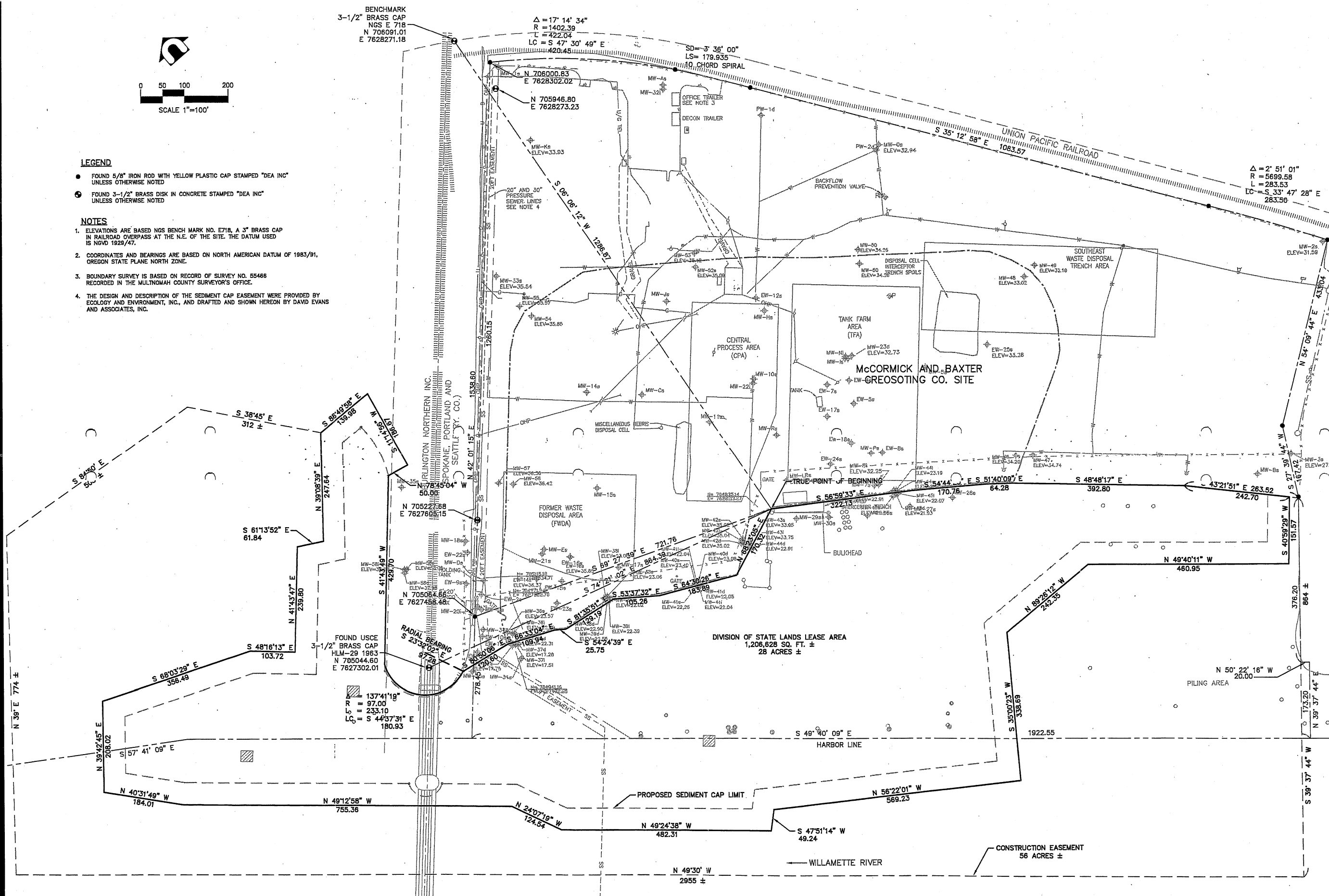


#### LEGEND

- FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "DEA INC" UNLESS OTHERWISE NOTED
- FOUND 3-1/2" BRASS DISK IN CONCRETE STAMPED "DEA INC" UNLESS OTHERWISE NOTED

#### NOTES

- ELEVATIONS ARE BASED NGS BENCH MARK NO. E718, A 3" BRASS CAP IN RAILROAD OVERPASS AT THE N.E. OF THE SITE. THE DATUM USED IS NGVD 1929/47.
- COORDINATES AND BEARINGS ARE BASED ON NORTH AMERICAN DATUM OF 1983/91, OREGON STATE PLANE NORTH ZONE.
- BOUNDARY SURVEY IS BASED ON RECORD OF SURVEY NO. 55465 RECORDED IN THE MULTNOMAH COUNTY SURVEYOR'S OFFICE.
- THE DESIGN AND DESCRIPTION OF THE SEDIMENT CAP EASEMENT WERE PROVIDED BY ECOLOGY AND ENVIRONMENT, INC., AND DRAFTED AND SHOWN HEREON BY DAVID EVANS AND ASSOCIATES, INC.



EASEMENT FOR SEDIMENT CAP  
**McCormick and Baxter  
Greosoting Co. Site**  
PORTLAND, OREGON  
WILLAMETTE RIVER

DAVID EVANS  
AND ASSOCIATES, INC.  
2100 Southwest River Parkway  
Portland, Oregon 97201  
Phone: 503.224.1222



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
DAVID A. SMITH  
PATRICIA J. SMITH  
RENEWAL 6/30/04

REVISIONS: APPD.

DATE: 4/5/04  
DESIGN: E&E  
DRAWN: TAS/NST  
CHECKED:  
REVISION  
NUMBER: 0

SCALE: 1"=100'

PROJECT NUMBER:  
ECEN0015

DRAWING FILE:  
ecen15bd.dwg

SHEET NO.

1

OF 1

EXHIBIT C